

ADMINISTRATIVE RECORD
Volume XI
(BCNR LTR BJD DOCKET
9126-10 of 18 AUG 11)



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 9126-10
18 August 2011

MSGT JAMES S FRAZIER JR USMCR RET
PO BOX 224
MCKEESPORT PA 15134

Dear Master Sergeant Frazier:

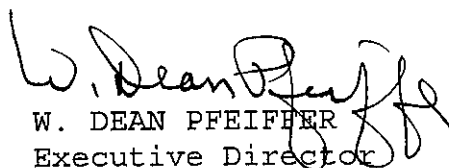
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested promotion to master gunnery sergeant (pay grade E-9) from the Fiscal Year (FY) 2004 Reserve Master Gunnery Sergeant Selection Board. By implication, you further requested that your retired grade be changed accordingly, from master sergeant (pay grade E-8) to master gunnery sergeant. Your previous case, docket number 2503-08, was denied on 8 January 2009. In accordance with the stipulation of dismissal of your case before the United States District Court for the Western District of Pennsylvania, your case was reconsidered.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 18 August 2011. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies, and the Board's file on your prior case. The Board also considered the advisory opinions from Headquarters Marine Corps dated 14 October 2010 and 29 June 2011, copies of which are attached. Finally, the Board considered your rebuttal letters dated 29 November and 1 December 2010 and 4 August 2011, each with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, the Board substantially concurred with the comments in the advisory opinions. The Board found you were eligible to be considered by the enlisted remedial selection board (ERSB), as you were not in confinement when the regular promotion board convened. In the absence of your having been selected by the FY 2004 Reserve Master Gunnery Sergeant Selection Board or an ERSB for that promotion board, the Board was unable to find you should have been promoted from that promotion board. In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,


W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:
1400/3
MMPR-2

OCT 14 2010

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF MASTER SERGEANT JAMES S.
FRAZIER 000 00 4041 USMC, RETIRED

Ref: (a) BCNR Docket Number 09126-10 dtd 17 Sep 10
(b) CMC ltr 1400/3 MMPR-2 dtd 4 May 05
(c) MCO P1400.32D (ENLPROMAN)

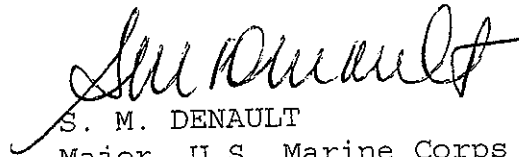
1. Per reference (a), Mr. Frazier is requesting to be retroactively promoted to the rank of master gunnery sergeant.
2. A review of Mr. Frazier's record verified he was promoted to the rank of master sergeant with a date of rank of 1 January 1998. With his date of rank (DOR) and pay entry base date (PEBD) at the time, Mr. Frazier was not eligible for consideration to the rank of master gunnery sergeant by the FY 2004 Reserve Staff Noncommissioned Officer (SNCO) Selection Board (IRR). However, per reference (b), the enlisted promotion section (MMPR-2) notified Mr. Frazier that, based on a correction to his PEBD, he had been approved for remedial promotion consideration to the rank of master gunnery sergeant by the FY 2004 Reserve SNCO Selection Board (IRR).
3. Mr. Frazier received a fair and impartial brief for remedial promotion consideration on 11 May 2005. However, he was not selected for promotion. The confidentiality of the selection board process precludes knowing the exact reasons why a Marine is not selected for promotion. It can only be inferred that, based upon a majority vote of the board members, Mr. Frazier's record was not competitive with the records of the Marines selected for promotion. He served in a highly competitive occupational field and simply did not get enough votes.
4. When a Marine is placed on an ERSB, his/her record is redacted so that only material that would have been considered by a regular selection board is contained in his/her record. Mr. Frazier's record was redacted to reflect its status as of 12 January, 2004, the day the FY 2004 Reserve SNCO Selection Board convened. Therefore, the ERSB would not have been aware that Mr. Frazier had been placed in a promotion restriction status on

REC'D OCT 15 2010

Subj: ADVISORY OPINION IN THE CASE OF MASTER SERGEANT JAMES S.
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8 April 2005. However, had he been selected by the ERSB on 11 May 2005, he would not have been promoted but would have had his promotion withheld until pending charges had been adjudicated.

5. Based on the foregoing, it is the opinion of this office that, in accordance with reference (c), Mr. Frazier was properly considered for promotion to master gunnery sergeant by the FY 2004 Reserve SNCO Selection Board (IRR) but was not selected.



S. M. DENAULT
Major, U.S. Marine Corps
Head, Enlisted Promotion Section



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:
1400/3

MMPR-2
JUN 29 2011

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF MR. JAMES S. FRAZIER
000 00 4041 USMC, RETIRED

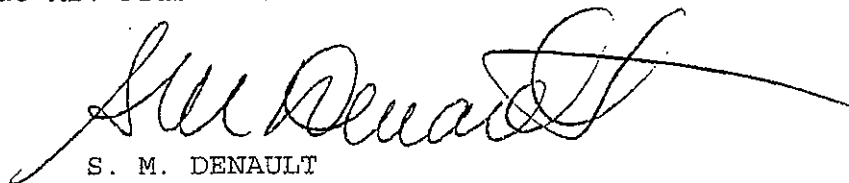
Ref: (a) BCNR Docket Number 09126-10 dtd 21 Mar 11
(b) SNCO remedial board research screen
(c) MCO P1400.32D W/CH 1 (ENLPROMAN)

1. Reference (a) requests that this office provide further clarification regarding the Enlisted Remedial Selection Board (ERSB) process and, more specifically, the ERSB that considered but did not select Mr. Frazier for promotion.
2. Mr. Frazier requested remedial consideration for promotion to the rank of master gunnery sergeant by the FY 2004 Reserve SNCO Selection Board (IRR) on 15 March 2005. This office approved his request on 18 March 2005. Reference (b) validates that, at the time his request was approved, there was no legal action reported in the Marine Corps Total Force System (MCTFS) that might have prohibited Mr. Frazier from being considered by the May 2005 ERSB.
3. Paragraph 3601.2 of reference (c) states, ". . . the ERSB is prohibited from considering material (i.e. fitness reports, commendatory/ adverse material) regarding events occurring after the regularly convened selection board for which remedial consideration has been granted." Therefore, prior to the ERSB convening on 11 May 2005, Mr. Frazier's record was redacted to restore it to its status as of 12 January 2004, the day the FY 2004 Reserve SNCO Selection Board (IRR) convened. The ERSB did not have knowledge of, nor would they have viewed, any documentation regarding the murder charges that were brought against him, or the fact that he was confined on 8 April 2005 pending adjudication of those charges. Mr. Frazier received a fair and impartial brief by the ERSB but was not selected for promotion.
4. As an aside, IF Mr. Frazier had been selected by the ERSB on 11 May 2005, and charges were still pending against him, his command would have been obligated to notify this office. The

Subj: ADVISORY OPINION IN THE CASE OF MR. JAMES S. FRAZIER
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CMC (MMPR-2) would then have delayed effecting his promotion (promotion withhold) pending a final adjudication of those charges.

5. This office and, by extension, the members of the ERSB, were completely unaware of Mr. Frazier's legal situation when he received remedial promotion consideration. It is therefore the opinion of this office that Mr. Frazier's record remain unchanged.



S. M. DENAULT
Major, U.S. Marine Corps
Head, Enlisted Promotion Section